REMARKS

Claims 1-24 and 45-50 are presently pending. The Office Action mailed 9-16-09 allowed Claims 1-24 and Claims 45-50 and rejected Claims 15-24. The indication of allowable subject matter is gratefully acknowledged.

In an Interview on 12-01-09, Applicant discussed with Examiner removal of the term "may" from Claim 1 and replacement of the associated clause with "wherein said database does not require communication with preexisting banking infrastructure." This change in wording appeared to be agreeable. Regarding Claim 15, it was settled that the prior art does not teach, disclose, or suggest a user-modifiable database in accordance with the discussion set forth below. Accordingly, Claim 15 should now be allowable.

By this Amendment, Applicant has amended Claim 1 to remove the term "may" therefrom in accordance with the above. Furthermore, Applicant has added Claim 51, with represents to an amended version of the originally filed Claim 1. Claim 51 recites that the charging terminal is not adapted to operate with biometric input thereto. Note that Applicant's original claim language reciting a charging terminal for "charging an account based on an account number" was intended to convey a charging terminal that does not receive biometric input thereto. Applicant's phrase emphasizing that charging terminal is not adapted to operate with biometric input thereto is intended for clarification purposes, and recites subject matter that was reasonably expected to have been claimed. Accordingly, the addition of Claim 51 should not necessitate the citation of additional references per MPEP 706.07.

Discussion Regarding Newly Added Claim 51

Note that Mitchell fails to show a charging terminal that is not adapted for use with biometric input thereto, i.e., that does not use biometric input, and also receives

credit card information (or other account information) retrieved via biometric information as claimed; then uses the received credit card information to initiate a charge via the terminal. This can be understood with reference to the flow diagrams of Mitchell.

Instead, a special biometric account at a bank is required by Mitchell (e.g., [0025]). Note that all of the terminals shown in Mitchell must be adapted to work with biometric information provided thereto via a fingerprint reader. Furthermore, note that the boxes labeled "Standard EFTPOS remote," "fingerprint reader," and so on in Mitchell represent labels used in place or reference numerals, and the boxes around the labels do not represent boxes around corresponding devices. Hence, the "Standard EFTPOS remote" in Mitchell refers to the device on the left side of Fig. 1, which clearly must be adapted to work with biometric information, which is provided by the fingerprint reader that is coupled thereto. Note that the "remote" shown in the upper left of Mitchell represents a data input device, which forwards input data to the so-called "Standard EFTPOS Terminal," shown at the bottom of Fig. 1 of Mitchell.

Note that the Standard EFTPOS Terminal" in Mitchell, clearly must be adapted to use biometric information provided by the fingerprint reader in Fig. 1 and relayed via the EFTPOS remote in light of Mitchell's discussion of the operation of the invention thereof. In particular, the EFTPOS Terminal of Mitchell must be adapted to use a "finger print credit card" ([0050] of Mitchell). Hence, Mitchell does not disclose a charging terminal that operates without biometric input thereto.

With reference to the Application, note that the charging module 20 of Fig. 1, which corresponds to the charging terminal as claimed (c.g., see p. 12, lines 7-11 of the originally filed Specification, which indicates that the module 20 may be a credit card terminal), communicates with the automated clearing house 24 and does not receive biometric information thereto. Accordingly, Applicant submits that Claim 51 should be allowable. If Examiner disagrees that Claim 51 is allowable as written, Applicant respectfully requests that Examiner make any appropriate modifications to Claim 51 (via

Examiner's Amendment) after consultation with Applicant, to bring the Application into condition for allowance.

Regarding Claim 15, The Cited Art Does Not Teach, Disclose, or Suggest a User Modifiable Database

In the above-identified Office Action, Claim 15 was rejected as being unpatentable over Mitchell in view of Waters. The rejection suggests (Office Action, p. 7, last ¶) that Mitchell teaches a means for selecting a particular account according to biometric information and that selecting a particular account based on the biometric information represents database modification as claimed in Claim 15.

However, neither Mitchell nor any of the art of record suggests a modifiable database as the term in used in Applicant's specification. In particular, "selecting a particular account according to biometric information," as purportedly shown in the prior art does not teach, disclose, or suggest modifying a database. If one observes information in a database or retrieves information from the database, or selects an account based on biometric information, this does not constitute user modification of the database as claimed.

A user modifiable database as discussed in the Application essentially entails the ability of the user to log on to the database to make changes thereto or otherwise entails the ability of a user to modify database entries and/or database functionality or behavior without the need to have a bank or other financial account issuer modify the database. Accordingly, selecting an account according to biometric information fails to teach a database that is user modifiable. None of the art of record suggests user ability to modify, i.e., change database entries or functionality as claimed. In particular, none of the prior art references shows how a user could log into/onto the database to modify entries or behavioral logic of the database.

Note that an Applicant has the right during patent prosecution to disclaim Examiner's interpretation of such terms (e.g., terms such as "access" or "modify" in relation to "selecting a particular account"), e.g., as per *Ballard Medical Products v. Allegiance Healthcare Corp.*, 268 F.3d 1352, 1359, 60 USPQ2d 1493, 1498 (Fed. Cir. 2001) and *Southwall Technologies, Inc. v. Cardinal IG Co.*, 54 F.3d 1570, 1576, 34 USPQ2d 1673, 1676 (Fed. Cir. 1995). Hence, it is well accepted that during prosecution, Applicant may supply meanings of terms that are of critical significance in determining the scope of the claims, e.g., as per *Vitronics*, 90 F.3d at 1582-83, 39 USPQ2d at 1577 and *Alpex Computer Corp. v. Nintendo Co.*, 102 F.3d 1214, 1220, 40 USPQ2d 1667, 1671 (Fed. Cir. 1996). This is consistent with *Vivid Techs, Inc. v. American Sci. &Eng'g, Inc.*, 200 F.3d 795, 804 (Fed. Cir. 1999), which holds that an Applicant may restrict claim terms via the prosecution history. It is generally very well established that Applicant may "...set forth a definition of the disputed claim term in either the specification or prosecution history." *CCSFitness*, 288 F.3d at 1366. The law undeniably allows a patentee to "...choose to be his or her own lexicographer by clearly setting forth an explicit definition for a claim term..." *Rexnord Corp.*, 274 F.3d at 1342. Furthermore, when another definition of a term, such as an Examiner-supplied definition or a dictionary definition, is inconsistent with the way Applicant uses or defines the term, "...the inconsistent dictionary definition must be rejected." *Texas Digital Sys., Inc. v. Telegenix*, No. 02-1032, _ F.3d _, slip op. at 12; 2002 WL 31307212 at *6 (Fed. Cir. Oct. 16, 2002).

Certainly "selecting a particular account," i.e., accessing an account does not teach, disclose, or suggest the ability of a user to modify a database entry, e.g., in view of the following. Database access as refers to the ability to observe data stored in the database or to copy data from the database, which can occur independently of database modification. Examples of database access include retrieving data from the database, selecting an account from the database according to biometric information, etc. Note that the databases of Waters or Mitchell would certainly not function properly if the databases

were actually modified in response to "selecting a particular account according to biometric information," as this would corrupt the database information, which is designed to be static (i.e., to remain the same) once an account is set up.

Database access in no way implies database modification. Instead, as defined herein and implied by the Application, database modification refers to changing data in the database or changing preestablished database behavioral rules, which may include, but is not limited to: deleting database entries, changing database entries, moving database entries, changing database indexes, changing existing biometric account-selection behavior and associated rules, and so on. Hence, teaching retrieval of data from a database or selecting of data in a database in no way teaches, discloses, or suggests end user ability to readily modify the database. For data in the databases of the prior art to be changed, the bank or clearing house would have to make modifications (not the user) in response to a tedious user application process for a new biometric charging card. The term "user modifiable database" if read in light of the Application refers to a database to which a user can effectively log on to make changes directly thereto. This clearly distinguishes over the prior art.

Hence, regarding Claim 15, the prior art does not teach a user modifiable database, rather the prior art teaches at most, an accessible database. Accordingly, Claim 15 should be allowable in light of the foregoing and in light of the Interview on 12-1-09.

Conclusion

The present Application is believed to be in proper form for allowance. Accordingly, allowance, and passage to issue are respectfully requested.

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office at 571-273-8300 on December 16, 2009.

Respectfully submitted,

Robert de Sylva

Applicant

Robert de Sylva

161 Ocean Park Blvd. #D

Santa Monica, CA 90405